

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN RIC HOLDEN**, on March 12, 2001 at 3:00 P.M., in Room 422, Capitol.

ROLL CALL

Members Present:

Sen. Ric Holden, Chairman (R)
Sen. Mike Halligan (D)
Sen. Greg Jergeson (D)
Sen. Walter McNutt (R)
Sen. Arnie Mohl (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Corey Stapleton (R)
Sen. Tom Zook (R)

Members Excused: Sen. Pete Ekegren, Vice Chairman (R)
Sen. Jon Tester (D)

Members Absent: None.

Staff Present: Laramie Cumley, Committee Secretary
Doug Sternberg, Legislative Services

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 492 2/2/01
Executive Action: HB 368; HB 387

HEARING ON HB 492

Sponsor: REP. PAUL CLARK, HD 72, TROUT CREEK

Proponents: Chris Smith, Montana Fish, Wildlife, and Parks
Sterling Miller, National Wildlife Federation
Lorna Karn, Montana Farm Bureau, Montana Grain
Growers Association
Kristin Sanderson, Montana Audubon

Jean Nelson-Dean, Montana Bureau of Land Management
Steve Pilcher, Montana Stockgrowers Association
Tim Molloy, Montana Department of Agriculture
Minette Johnson, Defenders of Wildlife
Kevin Chappell, Montana Department of Natural
Resources and Conservation
Toby Day, Montana Wildlife Federation

Opponents: Gary Marbut, Montana Shooting Sports Association,
Western Montana Fish and Game Association
Dave Skinner, Irate
Joe Williams, Representing himself

Opening Statement by Sponsor:

REP. PAUL CLARK, HD 72, TROUT CREEK, stated SEN. EMILY STONINGTON had asked him to carry the bill. He explained the history of the bill and discussed support of the National Wildlife Federation as well as how the bill will help Montana to manage its own affairs without interference from the federal government. It also changes the language which explains "prairie dog" from a pest to an endangered species. The bill will protect the interest of landowners as well as sportsmen. The status on the well being and population of prairie dogs will be reviewed annually by the Prairie Dog Working Group. He presented a letter of support from the organizations which have joined together in support of the bill. **EXHIBIT(ags56a01)**

SEN. HOLDEN questioned how this would affect state lands.

REP. CLARK stated the Department of Agriculture and the Department of Fish, Wildlife, and Parks would need to come together to decide where on state lands prairie dogs would need to be managed.

Proponents' Testimony:

Chris Smith presented written testimony. **EXHIBIT(ags56a02)**

Sterling Miller presented written testimony. **EXHIBIT(ags56a03)**

Lorna Karn spoke in favor of the bill and suggested a sunset provision amendment on the bill in which she would also support.

Kristin Sanderson spoke in support of the bill.

Jean Nelson-Dean stated she is a member of the prairie dog working group and she stood in support of the bill. She discussed shooting restrictions on BLM land.

Steve Pilcher stated the support for the bill does not come easy from his organization. He said he represents ranchers whose livelihood could be affected by this bill. These ranchers provide the habitat for the an endangered species. They are willing to do what needs to be done for a good management plan of endangered species. They feel by working with this program, the restrictive manner in which the endangered species act is administered once a species is listed may be avoided. Long term preservation of the prairie dog is important. The landowners right to control prairie dogs in unacceptable areas is also important. He stated the population of prairie dogs in the program will be based on science.

Tim Malloy spoke in favor of the bill for **Ralph Peck, Director, Montana Department of Agriculture**. He stated in 1949 the Legislature gave the Department of Agriculture the authority to assist in the control of vertebrate pests which includes prairie dogs. He concurred with statements made by the Department of Fish, Wildlife, and Parks. The language in HB 492 continues to allow the Department of Agriculture to assist in the control of prairie dogs. The interest of agricultural producers are protected in the bill.

Minette Johnson stated the history of prairie dogs and their decline. These declines in the past 50 years were caused by eradication campaigns, plague, shooting, conversion and urbanization. She presented a list of members on the prairie dog working group. **EXHIBIT (ags56a04)**

Kevin Chappell stood in support of the bill.

Toby Day stood in support of the bill.

Lorna Karn expressed support for the bill for the **Montana Grain Growers Association**.

Opponents' Testimony:

Gary Marbut stated Montana is working with nine other states on managing prairie dogs. The group researched and decided there are 10 million prairie dogs in the United States. He said this is a hoax. He wondered who is going to pay for the management. There will be problems with property rights.

Dave Skinner stated he did some research on the issue which led him to believe the bill was blackmail. He discussed restored ecosystems.

Joe Williams stated the bill is too vague. The population of prairie dogs is not accurate. There is not a shortage of prairie dogs and it cannot be compared to such things as the swift fox. He discussed hunting rights.

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN questioned the general population of prairie dogs and asked why they were referred to as black tailed prairie dogs.

Chris Smith stated there was not much discussion about the difference between the general population of prairie dogs and the black tailed prairie dogs. The plan addresses both black tail and white tail prairie dogs.

SEN. HALLIGAN questioned language in the bill on page 3, lines 10 and 11. He stated the language which refers to private property rights seems inconsistent with management and control.

Chris Smith stated this language was inserted because there was no need for the government to control the acts of private landowners and this provided reassurance to landowners.

SEN. COREY STAPLETON asked what the ratio of white tailed prairie dogs is to black tailed prairie dogs.

Chris Smith stated he could not give a specific ratio, but black tailed prairie dogs are predominant and the white tail prairie dogs are limited to a small portion of south central Montana. He stated there are 70 to 100 acres of white tailed prairie dogs.

SEN. STAPLETON clarified over 90% of prairie dogs are black tailed prairie dogs. If they are not endangered, he asked, what is the intent of the bill.

Chris Smith stated the threat of being listed is not the only reason for the bill and that is why the bill is not only referring to black tailed prairie dogs, when black tailed prairie dogs are the only species that has been listed.

SEN. TOM ZOOK questioned the statement **Mr. Smith** made stating the prairie dog working group is nationally recognized. He asked by whom.

Chris Smith primarily the 11 state range of the prairie dog working group, the Fish, Wildlife, and Parks departments in those states and the departments of Agriculture in most of the states as well.

SEN. ZOOK clarified the working group is mostly government agencies.

Chris Smith the Montana Working Group is both state and federal agencies, ranchers and landowners.

SEN. ZOOK asked how many of the people on the list of working group members were landowners.

Heidi Youmans stated there are five landowners.

SEN. ZOOK asked how many names were on the list and what percentage would be landowners.

Heidi Youmans stated about 1%.

SEN. ZOOK questioned **Mr. Miller's** response to a similar incident in Colorado.

Sterling Miller stated the Colorado Legislature passed a bill authorizing the setting of seasons for prairie dogs, as well as bag limits. All of Colorado was closed to the shooting of prairie dogs. There is very little shooting of prairie dogs in Colorado so the Fish and Game Commission thought that was something they could do to help the prairie dogs in the state without causing controversy.

SEN. ZOOK asked if the prairie dog was listed as a pest in Colorado.

Sterling Miller answered yes.

SEN. ZOOK asked how the Fish and Game Commission had the authority to do that.

Sterling Miller stated because they already had the authority to set certain statutes limiting the amount of shooting of prairie dogs, they must have had the authority designated to them from the Legislature previously.

SEN. ZOOK questioned the sunset provision suggestion and the certain threshold that must be met in the provision in order to become ineffective. He asked how would the number arrive to remove the sunset provision.

Sterling Miller noted Montana has the best survey work noticed in the 11-state region. He stated the Montana Department of Fish, Wildlife, and Parks has an estimate of the number of prairie dogs in Montana, which comes to about 70,000 acres. Although the estimate is not accurate, he stated it took two years for the 70,000 acre estimate to be established. Many landowners would not let biologists on their land to be studied for a more accurate number. The language as it currently exists in the bill requires a number which would be very difficult to establish in order to remove the sunset provision.

SEN. WALT MCNUTT asked what **Mr. Day** meant in his testimony by "this is the first step".

Toby Day stated he has heard from many organizations that this is the first step or a step in keeping the prairie dog off of the endangered species list.

SEN. MCNUTT asked what the next step would be.

Toby Day stated, "to reach the numbers needed to keep the prairie dog off the endangered species list".

SEN. MCNUTT clarified the Montana Wildlife Federation does not have the next step.

Toby Day answered no.

SEN. STAPLETON asked why the sponsor presented the bill on behalf of **SEN. EMILY STONINGTON** and why was he asked to carry the bill.

REP. CLARK stated he did not recall.

SEN. STAPLETON asked if one of the proponents lobbied him to carry the bill.

REP. CLARK answered no.

SEN. STAPLETON asked why the bill refers to the black tailed prairie dog but then speaks of the prairie dog in general. He stated the black tailed prairie dog is not all prairie dogs.

REP. CLARK stated the black tailed prairie dog is primarily what Montana is dealing with. He said the white tailed prairie dog was an insignificant part of the process and it was never discussed.

SEN. MOHL asked if prairie dogs are protected in any way from shooting.

Chris Smith answered, no there is no season, bag limits or licensing required.

SEN. ZOOK questioned language on page 3, line 10 regarding landowners rights to control prairie dogs in unacceptable locations. He asked why this is included if the government cannot interfere with private landowners.

REP. CLARK stated the language referred to was an amendment put on in the house. The question was redirected to the Montana Stockgrowers Association.

Steve Pilcher stated the determination should lie in the hands of the person who pays the taxes on the land.

SEN. ZOOK said the language seems to provide some allowances for someone else to make decisions. The language also provides for someone else to make a judgement of an unacceptable location.

Steve Pilcher encouraged **SEN. ZOOK** to continue reading. The bill says "as determined by the landowner."

SEN. ZOOK asked why the section 5, lines 9 through 11 were in the bill. He also questioned population goals based on science.

Steve Pilcher stated the numbers of prairie dogs is beginning to become more accurate with work from the Department of Fish, Wildlife, and Parks as well as landowners.

SEN. HOLDEN questioned the reasons for support from the **Montana Stockgrowers Association** knowing if the prairie dog is listed as an endangered species, the decisions would be federal.

Steve Pilcher stated their policy explained opposition to the listing of the prairie dog for a long list of reasons. The reasons the bill is coming forward is so the state may immerse itself more into management of the species to avoid the listing from the **United States Fish and Wildlife Service**.

SEN. HOLDEN asked how **Mr. Miller** scientifically determined that the black tailed prairie dog should be listed and an endangered species.

Sterling Miller stated the range wide population of prairie dogs is not exactly known. Under the five criteria of the endangered species act of the Fish and Wildlife Service, the prairie dog meets all five. He stated it asked to be a threatened species not an endangered species. If existing trends continue, they will be endangered.

SEN. HOLDEN asked if **Mr. Miller** had information to prove the generalities of his statements.

Sterling Miller discussed adequate regulatory mechanisms in Montana which is not scientific, it is a legal or political question.

SEN. HOLDEN clarified to make the leap from scientific data to the need for regulatory reform, there is no scientific data to legitimize the need for this regulatory legislation.

Sterling Miller stated prairie dogs have been reduced to 1% of their original population and they do not exist in large colonies any longer.

SEN. HOLDEN asked if there was documentation to verify habitat population in Montana presently and historically.

Sterling Miller stated although there are questions regarding the original range of prairie dogs, the numbers have been reduced to between one and five percent of the original population.

Closing by Sponsor:

REP. CLARK closed HB 492 by explaining his intentions of the bill.

EXECUTIVE ACTION ON HB 368

SEN. HALLIGAN presented amendments to the bill, **HB036801.ads EXHIBIT (ags56a05)**

SEN. JERGESON presented amendments to the bill, **HB036802.ads EXHIBIT (ags56a06)**

Doug Sternberg explained the amendments **HB036801.ads** put the suggested language from the bill into standard bill drafting form. The **HB036802.ads** amendments changed the matching fund portion of the bill which struck the 1 to 1 ratio and inserted 25% of the total project cost.

Motion: **SEN. JERGESON** moved that **AMENDMENT HB036802.ads BE ADOPTED. Vote:** Motion **carried unanimously.**

Motion/Vote: **SEN. ZOOK** moved that **HB 368 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

SEN. JERGESON noted he would carry the bill.

EXECUTIVE ACTION ON HB 387

SEN. HALLIGAN presented amendments and explained **HB038701.ads**. **EXHIBIT(ags56a07)** The amendment would standardize the penalties in the bill and to change taking pictures of a crop facility with intent of criminal defamation to an unlawful act.

Motion: SEN. HALLIGAN moved that **AMENDMENT HB038701.ADS BE ADOPTED.**

Discussion:

SEN. STAPLETON asked if the amendment was just normalizing existing law.

SEN. HALLIGAN answered, yes.

SEN. ZOOK asked if the amendment would make the penalties more or less severe.

SEN. HALLIGAN stated that one is more and several were less therefore, the bill is similar.

Vote: Motion **carried unanimously.**

Motion/Vote: SEN. HALLIGAN moved that **HB 387 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

SEN. NELSON noted she will carry the bill.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. RIC HOLDEN, Chairman

LARAMIE CUMLEY, Secretary

RH/LC

EXHIBIT (ags56aad)